

**Letter of Findings: 01-20160083
Indiana Individual Income Tax
For The Tax Year 2012-2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was a resident of Indiana for 2014 but not 2012 nor 2013. Therefore, Individual was required to file 2014 individual Indiana income tax return.

ISSUES

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-1.1-12-37; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayer protests the Department's proposed assessment for the tax years 2012-2014.

II. Tax Administration - Non-filer Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1.

Taxpayer protests the imposition of the non-filer penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual with property in both Indiana and Florida. In 2015 the Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's business. During that time the Department also investigated Taxpayer's individual income and determined that Taxpayer was an Indiana resident for the tax years 2012-2014 and that Taxpayer failed to file 2012-2014 Indiana income tax returns. The Department therefore, issued proposed assessments for 2012-2014 income tax, penalty, and interest.

Taxpayer protested the assessments. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax years 2012-2014. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed income tax for the 2012-2014 tax years on the grounds that Taxpayer was an Indiana resident and that she failed to file her 2012-2014 Indiana income tax returns. Taxpayer contends that she was not required to file 2012-2014 Indiana income tax returns because she was not an Indiana resident. The issue is whether, for the tax years 2012-2014, Taxpayer was an Indiana resident and therefore was subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette

Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, Taxpayer is required to provide documentation explaining and supporting her challenge that the Department's assessment is wrong.

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be her Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

For guidance in determining a taxpayer's domicile, the Department refers to *Croop v. Walton*, 157 N.E. 275 (Ind. 1927). In *Croop* a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. *Id.* at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. *Id.* The court found that Mr. Walton: owned and managed a company and stores in Michigan; maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Sturgis was used in his legal documents, including insurance policies, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has**

his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case.

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.**

Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1317-18. (Internal citations omitted) (**Emphasis added**).

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." *Bayh*, 521 N.E.2d at 1317.

The Department determined that Taxpayer was an Indiana resident based on both tests: Taxpayer was domiciled in Indiana for 2012 and 2013 and Taxpayer was in Indiana for 183 days while maintaining a permanent residence in Indiana for the year 2014.

A. Domicile

The Department determined that Taxpayer was domiciled in Indiana for the tax years 2012 and 2013. The Department based this determination on the fact that Taxpayer owned a home in Indiana. Taxpayer operated her Indiana based business in throughout the Midwest and stayed in her Indiana home instead of a hotel, and was in Indiana more than 183 days in 2014. Taxpayer only needed to meet one part of the two tests to be considered an Indiana resident.

Taxpayer provided several documents to support her position that she is domiciled in Florida. Taxpayer purchased a home in Florida in 1994. Taxpayer provided documentation that she is taking the Florida homestead credit on her Florida property tax. Taxpayer also provided her Florida driver license, Florida vehicle registration, Florida voter registration, Florida guardianship papers, Florida trust documents, and a Florida club membership.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317-18. Taxpayer provided sufficient documentation to show that she was not domiciled in Indiana for 2012 and 2013. Therefore, Taxpayer has met the burden of proving the proposed assessment wrong for the years 2012 and 2013, as required by IC § 6-8.1-5-1(c).

B. 183 Day Resident

The Department determined that Taxpayer was in Indiana for over 183 days during 2014. The Department confirmed this through flight records and credit card purchases. Furthermore, Taxpayer admitted to being in Indiana for more than 183 days. Taxpayer explained she was in Indiana for an extended period of time dealing with family situations. She claimed that she did not always reside in her home in Indiana, and was attending to family. Taxpayer claims that her time in Indiana therefore does not fall under IC § 6-3-1-12(b).

Taxpayer however is mistaken. "[A]ny individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12(b). Therefore, to be a resident under this statute, a taxpayer only needs to be in Indiana for 183 and have a permanent place of residence. As previously explained, Taxpayer maintains a home in Indiana. Also, Taxpayer was in Indiana for more than 183 days in 2014. Both criteria of IC § 6-3-1-12(b) have been met and so Taxpayer was an Indiana resident in 2014. Taxpayer has not met her burden under IC § 6-8.1-5-1(c). Therefore, Taxpayer's protest that she was not an Indiana resident in 2014 based on being in Indiana less than 183 days is denied.

FINDING

Taxpayer's protest is sustained on her protest for the years 2012 and 2013. Taxpayer is denied on her protest for 2014.

II. Tax Administration - Non-filer Penalty and Interest.

DISCUSSION

A. Non-filer Penalty.

Taxpayer requested that the Department abate the non-filer penalty.

Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date" Since Taxpayer demonstrated that she was not a resident for 2012 and 2013, her penalty will only be imposed on the amount of income tax due for 2014.

B. Interest.

Taxpayer asserts that she does not owe interest. Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

In the case of the interest assessed, the Department has no discretion to abate or adjust the amount of interest owed. IC § 6-8.1-10-1(e). Taxpayer's request to abate interest is denied. However, since base tax will be reduced, the interest will also be reduced

FINDING

Taxpayer's protest of the non-filer penalty is sustained for the years 2012 and 2013 while it is denied for the year 2014. Taxpayer's protest of interest is denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2012 and 2013 tax years is sustained, while the proposed assessment for 2014 is denied. Taxpayer's protest of the non-filer penalty is sustained for 2012 and 2013 while Taxpayer's protest is denied for 2014. Taxpayer's protest on interest is denied.

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